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IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

v.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

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International Longshoremen's Association, Local 1416, AFL-CIO (hereinafter sometimes referred to a "Local 1416" or "the Union") petitions for a writ of certiorari to review the judgment of the District Court of Appeal, Third District, State of Florida, in this case.[1]

Opinions Below

The order of the Supreme Court of Florida, denying certiorari to review the decision of the Florida District

[1] The Supreme Court of Florida having denied certiorari, the order which petitioner seeks to have reviewed herein is that of the District Court of Appeal, the highest state court passing upon the merits. *ILGWU Local 415* v. *Scherer & Sons, Inc.*, 389 U.S. 577 and 390 U.S. 717.

Court of Appeal, Third District, was rendered without opinion; and its order is set forth at Appendix pp. 14a-15a. The opinion of the District Court of Appeal, Third District, on the appeal from the judgment of permanent injunction issued by the Circuit Court of Dade County, which also constitutes the order of the Court of Appeal sought to be reviewed herein (*Retail Clerks Local 1625* v. *Schermerhorn*, 373 U.S. 746), is reported in 215 So. 2d 51 and set forth at Appendix pp. 7a-12a. The opinion of the District Court of Appeal, Third District, on appeal from a temporary restraining order issued by the Circuit Court of Dade County is reported in 195 So. 2d 238 and is set forth at Appendix p. 13a. The Circuit Court of Dade County did not render any opinion, either on issuance of the temporary restraining order or grant of the permanent injunction; its orders are set forth at Appendix pp. 16a, 17a-19a.

Jurisdiction

The order of the Supreme Court of Florida denying certiorari was entered on March 19, 1969. The order of the District Court of Appeal was entered on October 29, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

Questions Presented

1. Whether the National Labor Relations Act preempts state jurisdiction to enjoin peaceful picketing by a longshore union protesting the payment of substandard wages to non-union workers employed to load a foreign flag vessel in an American port.

2. Whether the issuance of an injunction against peaceful picketing, protesting substandard wages, violates peti-

tioner's rights under the First and Fourteenth Amendments to the United States Constitution.

Constitutional and Statutory Provisions Involved

The applicable Constitutional provisions are:

> Article VI, 2nd Paragraph (Supremacy Clause); First and Fourteenth Amendments;

The applicable statutory provisions are:

> National Labor Relations Act, §§ 7, 8(b)(4), 8(b)(7). and 9(a) and (b); 29 U.S.C. §§ 157, 158(b) (4), 158(b) (7), and 159(a) and (b).

The text of these provisions is set forth at Appendix pp. 1a-6a.

Statement

Respondents operate at least two vessels under foreign registry on Caribbean cruises originating in Miami and Fort Lauderdale, Florida. Local 1416, an affiliate of the International Longshoremen's Association, AFL-CIO, represents longshoremen in the Miami-Fort Lauderdale area.

The ordinary longshore work of loading and stowing ship's cargo and loading automobiles aboard respondents' vessels was performed, in these Florida ports, not by union longshoremen but partly by ship's employees and partly by outside personnel hired for the occasion. Their wages were below the area standards established in local ILA agreements. Accordingly, on days when these longshore operations took place, Local 1416 posted a picket on the dock in front of the ship protesting the payment of sub-standard wages to the non-union personnel performing

longshore functions. On days when no loading occurred, no picketing took place (Appendix 41a-42a).

On at least one occasion the Union also displayed a sign calling attention to unsafe shipboard conditions, dangerous to passengers and employees.[2]

Upon service of the complaint and request for a temporary restraining order, the Union filed a motion to dismiss for lack of jurisdiction, asserting that the issues raised by respondent fell within the exclusive jurisdiction of the National Labor Relations Board (Appendix pp. 20a-22a). A companion motion to dismiss was filed on the ground that the activities complained of were protected by the First and Fourteenth Amendments (Appendix pp. 23a-24a).

At the hearing on the application for temporary injunctive relief, the Union reiterated its contention that the preemption doctrine applied to picketing directed at the payment of substandard wages for longshore work and that the picketing was also protected by the First and Fourteenth Amendment. The trial court accepted the company's argument that the decisions in *McCulloch* v. *Soci-*

[2] Although the trial judge enjoined these "safety" signs, he specifically declined to find them false and, indeed, assumed their truth as a matter within his judicial notice (Appendix p. 35a). No factual evidence on this issue was ever presented by either side. The trial judge apparently viewed the charges of unsafe shipboard conditions, though true, as beyond the legitimate interests of a labor union and therefore unjustified, enjoinable interference with respondents' business. Between the issuance of the temporary restraining order and the permanent injunction, the federal authorities imposed stricter safety requirements on foreign flag passenger vessels using American ports, and the Union thereupon abandoned its appeal from this branch of the injunction. Notwithstanding such express abandonment, the District Court of Appeal inexplicably held this decretal provision to be justified in order "to counter . . . appellant's false accusations regarding the unsafeness of the ships." In any event, petitioner regards this issue as abandoned, and no review of those provisions of the injunction is sought herein.

edad Nacional de Marineros de Honduras, 372 U.S. 10 and *Incres Steamship Co., Ltd.* v. *IMWU*, 312 U.S. 24, deprived the NLRB of jurisdiction over longshore operations performed on foreign flag vessels in American ports, and not merely disputes involving the labor relations of the ship's crew (Appendix pp. 35a-41a; 43a-44a).

The trial court specifically concluded "that the National Labor Relations Board has no jurisdiction in this cause, that there is no labor dispute; and that this Court has jurisdiction in this issue." Its order enjoined:

> "3—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;" (Appendix p. 18a).

The Union took an interlocutory appeal to the District Court of Appeal on the issue of jurisdiction, again urging the preemptive force of the federal labor laws. The temporary restraining order was affirmed per curiam on the authority of *Sociedad Nacional* and *Incres* (Appendix p. 13a).[3]

The Union then filed its answer in the trial court, alleging, among other defenses, the exclusive jurisdiction of the NLRB over the substandard wage picketing and the free speech guarantees of the Federal Constitution (Appendix pp. 28a-34a). Without adducing further proof, the company moved for summary judgment making the temporary injunction permanent; and this motion was granted by the trial court.

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[3] The single state court case cited by the District Court dealt with the Union's alternative contention that the companies had failed to qualify under Florida law and thus lacked standing to sue in the Florida courts.

On appeal the Union continued to urge both the free speech contention and the state court's lack of jurisdiction over peaceful picketing to protest substandard longshore wages. The District Court of Appeals acknowledged that the testimony at the hearing on the temporary restraining order—the only hearing had in the case—"tended to show . . . that the Union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages". Holding that state jurisdiction was not preempted, the Court concluded that the injunction properly "embodied the court's finding that no real dispute over wages existed, and therefore, publicizing accusations as to that grievance was also forbidden." [4]

The Union then petitioned the Supreme Court of Florida for a writ of certiorari to review the decision of the District Court of Appeal, again urging the applicability of the preemption doctrine and free speech guarantee. Under Florida law, the State Supreme Court has jurisdiction over this type of case only to resolve conflict between two

[4] Neither the opinion of the District Court of Appeal nor any order of the trial court explains what the District Court meant in saying that no "real" dispute over wages existed. The trial court concluded that there was no "labor dispute" and enjoined picket signs indicating that a "labor dispute exists between Defendant and Plaintiff by any reference to substandard wages." But there was neither evidence nor finding of a lack of "real" dispute, in the sense that the professed objective or message of the picket sign masked some other non-labor objective unrelated to wage scales. The trial court's statement as to the lack of a "labor dispute" would appear to be merely a conclusory capsulizing of one of the following legal theories: (1) a "labor dispute" is a dispute within the jurisdiction of the NLRB, and since this dispute is not within NLRB jurisdiction, it is not a "labor dispute"; or (2) inasmuch as Local 1416 did not represent any of the longshore employees of respondents, no "labor dispute" existed between the parties. For reasons summarized below, petitioner urges that the legal assumptions underlying both theories are clearly erroneous and contrary to the decisions of this Court.

District Courts of Appeal or between the decision sought to be reviewed and decisions of the State Supreme Court. Constitution of the State of Florida, Article V, Section 4(2); Florida Appellate Rules 4.5 c(6). Over the dissent of two Judges, the Supreme Court of Florida denied the petition for certiorari, "it appearing to the Court that it is without jurisdiction".

Reasons For Granting the Writ

1. The decision of the Florida courts granting a permanent injunction against peaceful picketing to publicize substandard wage payments directly conflicts with decisions of this Court. The issues fall squarely within the jurisdiction of the National Labor Relations Board, and state injunctive jurisdiction is clearly preempted. *Garner* v. *Teamsters Local 776*, 346 U.S. 485; *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236; *Liner* v. *Jafco, Inc.*, 375 U.S. 301; *National Marine Engineers Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173; *Hanna Mining Company* v. *District 2, MEBA*, 382 U.S. 101.

Peaceful picketing directed at wage scales below the area standards established by the picketing union is protected actively under the National Labor Relations Act. And whether or not this is the "real" objective of the Union is an issue entrusted by that Act to the exclusive jurisdiction of the NLRB and regularly decided by that Board under Sections 8(b) (4) and 8(b) (7). *E.g. International Hod Carriers Local 41 (Calumet Construction Co.)*, 130 NLRB 78, *rev'd* 133 NLRB 512; *Retail Clerks Local 344 (Alton Myers)*, 136 NLRB 1270; *Local 953 IBEW (Erickson Electric Co.)*, 154 NLRB 130; *Retail Clerks Local 889 (Ted R. Frame)*, 166 NLRB No. 92; Note, "Illegal Picketing Under Section 8(b) 7-A Reexamination", 68 Columbia L. Rev. 745. A state court is without power to enjoin such

picketing on the ground that no labor dispute exists between the parties. *Liner* v. *Jafco, supra; Local 438, Construction Workers* v. *Curry,* 371 U.S. 542.

2. The decisions in *McCulloch* v. *Sociedad Nacional de Marineros de Honduras,* 372 U.S. 10 and *Incres Steamship Company Ltd.* v. *International Maritime Workers Union,* 372 U.S. 24 have no application and were erroneously regarded as controlling by the Florida courts. These cases dealt with attempts to organize the alien crewmen of foreign flag vessels, and this Court concluded that relations between such ships and their seamen employees—characterized as "maritime operations"—are outside the jurisdiction of the National Labor Relations Board. None of the considerations referred to in these decisions apply to traditional longshore operations, the loading, unloading and stowage of cargo, performed on foreign flag vessels in American ports. *Cf. Benz* v. *Compania Naviera Hidalgo,* 353 U.S. 138.

3. The National Labor Relations Board has frequently and continuously taken jurisdiction over the American longshore operations of foreign flag vessels, both as to representation elections and unfair labor practice charges. Labor relations in the longshore industry have never depended upon the registry of the vessel. The same collective bargaining agreement covers all American longshore operations on both foreign and domestic ships; and, indeed, the bulk of longshore work in this county involves foreign flag vessels. When establishing a port-wide appropriate bargaining unit, the NLRB has set a single unit for the longshore employees of all shipping companies, both foreign and domestic.[5] Moreover, the NLRB has al-

[5] The presently effective NLRB certification for longshoremen in the Port of New York is set forth in *New York Shipping Associa-*

ways taken jurisdiction over unfair labor practice charges involving longshore operations on foreign flag vessels.[6]

4. The issue involved in this case is of substantial general importance to the entire longshore industry. If, as the Florida courts have held herein, NLRB jurisdiction does not extend to longshore operations of foreign flag vessels, then serious consequences follow, not only to the tens of thousands of workers who would thereby be deprived of the protection of the Federal Act, but to the entire national economy as well. It is not necessary to belabor the crucial, sensitive importance of this industry to the national welfare; the fact that it has been the sub-

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tion, Inc., 116 NLRB 1183. Among the employers included in the single Port-wide bargaining unit are such well-known foreign flag lines as Argentine State Line, Belgian Line, Inc., Chilean Line, The Cunard Steamship Company, Ltd., French Line, Hellenic Lines, Ltd., Holland-American Line, Italian Line, and Royal Netherlands Steamship Company. Other representation proceedings involving pierside operations of foreign flag lines are *Compagnie Generale Transatlantique (French Line)*, 117 NLRB 535 and *Italia Societa per Azione di Navigazione (Italian Line)*, 118 NLRB 1113.

Although many shipping companies have their American longshore operations performed by stevedoring contractors, some companies, including foreign flag lines, employ longshoremen, checkers, tally clerks, and similar workers directly, and they have always heretofore been considered subject to NLRB jurisdiction. The record herein does not show whether or not respondent operated through a local stevedore, but this, we urge, is immaterial, since NLRB jurisdiction applies in either event.

[6] *E.g. Local 1355, ILA (Maryland Ship Ceiling Co.)*, 146 NLRB 723; *Cunard Steamship Co., Ltd.*, Cases 4-CA-1787, 1788, 4-CB-482, 4-CA-2229-1-2-3, 1961 CCH NLRB Decisions ¶10,813; *Madden* v. *Grain Elevator Workers Local 418*, 334 F.2d 1014, *cert. denied*, 379 U.S. 967; *Grain Elevator Workers Local 418* v. *NLRB*, 376 F.2d 774, *cert. denied*, 389 U.S. 932.

Foreign flag shipping lines are, of course, also compelled to abide by other federal social welfare legislation, such as Social Security and Longshoremen's Compensation, affecting their longshore employees in United States ports.

ject of more "national emergency" injunctions under the Taft-Hartley Act than any other industry is sufficient demonstration of that.

The holding of the Florida courts would, in effect, bifurcate labor relations in this complex, sensitive industry. A portion of an industry which has traditionally been treated as an entity would be governed by the federal labor law with its single, authoritative, expert tribunal. Another portion—the major portion at that—would be subject to the laws of the various states and their respective tribunals.

The effects of this would work both ways. To take but a single recent example, the recent national longshore strike was ended through temporary injunctions obtained by the NLRB against alleged union unfair labor practices in certain leading ports. If the NLRB lacked jurisdiction over foreign flag longshore operations, the consequences might have been entirely different.

In other instances, the union, as charging party, would be deprived of the benefits of NLRB unfair labor practice jurisdiction or would be unable to avail itself of the Board's representation procedures. And in lawsuits instituted in state courts, such as the case at bar, longshoremen and their union would be deprived of the protection of federal law and the uniform application of that law by the prescribed federal agency.

5. In addition, this injunction against peaceful picketing violates petitioner's rights under the First and Fourteenth Amendments. There was neither evidence nor finding of violence or other physical impediment to the free passage of either persons or materials. Nor was the picketing directed toward an illegal end or some other objective which

might validly be immunized
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wages in the industry in wh
can Federation of Musician from union activ-
Mine Workers v. *Pennington* inate sub-standard
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not lost merely because it (391 U.S. 99, 106;
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391 U.S. 308; *Bakery Driv* esent the employ-
769; *AFL* v. *Swing*, 312 U. s work. *Amalga-*

A state court may not a *gan Valley Plaza,*
tional protection merely b v. *Wohl*, 315 U.S.
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Wohl, supra. The record c r dispute". That
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6. In sum, the decision that petitioner's
injunction thus sustained is squarely within
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CONCLUSION

For the foregoing reasons, it is urged that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX